

**BOARD OF ADJUSTMENT MEETING
CITY OF FORT LAUDERDALE
WEDNESDAY, NOVEMBER 13, 2013 – 6:30 P.M.
CITY HALL CITY COMMISSION CHAMBERS – 1ST FLOOR
100 NORTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA**

Board Members	Attendance	Cumulative Attendance 6/2013 through 5/2014	
		Present	Absent
Diana Waterous Centorino, Chair	P	4	2
Michael Madfis, Vice Chair	P	5	1
Roger Bond	P	6	0
Caldwell Cooper	A	5	1
Karl Shallenberger	P	5	1
Fred Stresau	P	4	2
Sharon A. Zamojski	P	4	2
<hr/>			
Alternates			
Charlotte Rodstrom	P	4	2
Matthew Scott	P	2	0
Birch Willey	A	4	2

Staff

Bob Dunckel, Assistant City Attorney
Anthony Fajardo, Zoning Administrator
Mohammed Malik, Director of Zoning
Lynda Crase, Administrative Aide
Brigitte Chiappetta, Recording Secretary, Prototype Inc.

Communication to the City Commission

None

Purpose: Section 47-33.1.

The Board of Adjustment shall receive and hear appeals in cases involving the ULDR, to hear applications for temporary nonconforming use permits, special exceptions and variances to the terms of the ULDR, and grant relief where authorized under the ULDR. The Board of Adjustment shall also hear, determine and decide appeals from reviewable interpretations, applications or determinations made by an administrative official in the enforcement of the ULDR, as provided herein.

Index

	<u>Appeal Number</u>	<u>Applicant/Agent</u>	<u>District</u>	<u>Page</u>
1.	13-20	Charles E. Falk, Sr.	1	<u>2</u>
2.	13-22	6600 North Andrews Avenue LLC, c/o Cardinia Real Estate LLC	1	<u>4</u>
3.	13-23	6600 North Andrews Avenue LLC, c/o Cardinia Real Estate LLC	1	<u>6</u>
4.	13-24	Stewart G. Gorenberg	4	<u>7</u>
		Communication to the City Commission		<u>9</u>
		For the Good of the City		<u>9</u>

Call to Order

Chair Centorino called the meeting to order at 6:32 p.m. She introduced Board members and determined a quorum was present.

Mr. Scott took Mr. Cooper's place on the dais.

Approval of Minutes – October 2013

Motion made by Mr. Shallenberger, seconded by Mr. Stresau, to approve the minutes of the Board's October 2013 meeting. In a voice vote, motion passed unanimously.

Board members disclosed communications they had and site visits made regarding items on the agenda.

All individuals wishing to speak on the matters listed on tonight's agenda were sworn in.

Mr. Stresau noted that staff recommendations now appeared on the agenda and he was disturbed by this because he thought appeals presented to the Board were those that staff had deemed were correct per the zoning code. He requested the Board discuss this under Good of the City. Mr. Fajardo agreed this was a departure and stated this was not uncommon in municipalities. He said staff was "not trying to come before the Board and tell you whether we think it does or does not meet the criteria laid out for the Board's decision making" but they wanted to give the Board staff's perspective and if the Board decided to approve, staff had recommended certain conditions.

1. APPEAL NO. 13-20

Index

APPLICANT: Charles E. Falk, Sr.
AGENT: Edwin J. Stacker, Esq., Mastriana & Christiansen, P.A.
LEGAL: PORTO VENEZIA CONDO UNIT PH1 (AKA PH W)
ZONING: RMM-25 (Residential Mid-Rise Multifamily/Medium High Density District)
STREET: 2765 NE 14 Street

ADDRESS: Fort Lauderdale, FL
DISTRICT: 1

APPEALING: Section 47-19.3 (Boat slips, docks, boat davits, hoists and similar mooring structures) Requesting a variance to allow a third mooring device (boat lift) on a site with two hundred (200) feet of lot width along the waterway, where the code states that only one (1) mooring device may be installed per the first one hundred (100) feet of lot width or portion thereof, and one mooring device for each additional one hundred (100) feet of lot width.

(MOTION FOR REHEARING APPEAL FROM SEPTEMBER 11, 2013)

Edwin Stacker, attorney for the applicant, distributed photos of the property and pointed out where Mr. Falk's boatlift was located. He stated the rehearing motion was intended to "point out how the Board erred or to bring up new information that wasn't readily available to the applicant at the time of the last hearing." He said his letter correctly pointed out that the Board had erred by failing to recognize that the applicant had met, by a preponderance of the evidence, the criteria for a variance. He hoped the Board would grant the re-hearing and they could start all over in December.

Motion made by Ms. Zamojski, seconded by Mr. Bond to grant the request for re-hearing.

Chair Centorino opened the public hearing. There being no members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Mr. Dunckel read from the code section describing the criteria for granting a motion for re-hearing. The reasons should be limited to the following:

1. A re-hearing was necessary to correct an error, or;
2. A re-hearing was necessary to consider new evidence or information not considered by the Board when the application was denied, such evidence or information having been neither known to the applicant nor known or discoverable or obtainable through reasonable diligence on the part of the applicant prior to the hearing at which the application was denied.

Mr. Stacker said his argument was that the Board erred by failing to recognize that the applicant had "met our burden by a preponderance of the evidence that we met the criteria." Mr. Stacker said, "I can't get into the substance of it." He pointed out that no one had spoken against the request in September, there had been no allegation that there was a line of sight issue and the evidence that was presented in September should have been sufficient to grant a variance.

Mr. Dunckel reiterated the criteria for a re-hearing and said Mr. Stacker had stated that

the purpose of the motion for re-hearing was not for Mr. Stacker to re-argue elements he had argued the first time around. Mr. Madfis felt Mr. Stacker was indicating "we didn't object to your presentation in any substantive way and therefore there was an error; that doesn't really hold water to me." Mr. Stacker said, "The record before you as presented at the September meeting supported granting a variance and that the Board...erred...in their failure to recognize that the applicant had met their burden." Mr. Madfis asked Mr. Stacker to point out the error and Mr. Stacker replied, "I'm not supposed to get into the criteria." Mr. Madfis countered that "Just to say that because we didn't vote your way, we somehow missed the preponderance of evidence that you provided and it didn't go right, so you want to re-present it again, I don't quite get it." Mr. Stacker stated, "We'd rather deal with it before you than in a court of law." Mr. Madfis wanted Mr. Stacker to point out where the Board had erred.

Mr. Dunckel referred to Mr. Stacker's letter and said in it, he had "set out in synopsis, the elements that he relies upon to establish error...I believe that these are the major elements that he's resting his case on."

Mr. Shallenberger disagreed there had been any error and disagreed with Mr. Stacker's argument. He said those who had voted against the request did not make an error; they had just voted against the request.

In a roll call vote, motion **failed** 4-3 with Mr. Shallenberger, Mr. Stresau and Mr. Madfis opposed.

2. APPEAL NO. 13-22

Index

APPLICANT: 6600 North Andrews Avenue LLC, c/o Cardinia Real Estate LLC
AGENT: Michael E. Wood Consulting, Inc., Michael E. Wood
LEGAL: PARK LAKE 106-1 B PARCEL A LESS PARCELS DESC IN OR
11921/815
ZONING: B-3 ((Heavy Commercial/Light Industrial Business))
STREET: 6600 N ANDREWS AVE
ADDRESS: Fort Lauderdale, FL
DISTRICT: 1

APPEALING: Section 47-22.3.G (Sign Requirements – Flat Signs / Wall Signs)

Requesting a variance to allow a flat wall sign of 1,088 square feet where the code states that a flat sign / wall sign shall not exceed twenty-five percent (25%) of the size of the wall or a maximum of (300) feet.

(DEFERRED FROM OCTOBER 9TH MEETING)

STAFF RECOMMENDATION:

Staff recommends approval of the request subject to conditions of approval

Conditions of Approval:

1. The total square footage of the requested wall sign does not exceed nine hundred (900) square feet; and,
2. No other wall signs shall be installed on the remaining facades.

Mr. Fajardo said the development side allowed up to four signs on this site and each sign could be up to 300 feet. If the three were aggregated, the total square footage would be 900 square feet. Staff was asking the applicant to accept the condition that no other signs would be permitted on any other façade if the three signs were aggregated into one 900 square foot total.

Robert Lochrie, attorney, said because of staff's recommendation for the applicant's second request, item 3, they wished to withdraw it.

Mr. Lochrie said the applicant had heard the Board's concerns the previous month and subsequently redesigned the request. He explained that they would combine the three signs into one 900 square foot sign on the south side of the building. They had also moved the sign down on the building to make it more aesthetically pleasing.

Mr. Lochrie showed several photos of the building as seen from I-95 and pointed out that the building was difficult to see until one reached to top of the Cypress Creek overpass.

Mr. Lochrie had contacted the nearby Alpine Jaguar, who had provided a letter of support for the request. Mr. Lochrie informed Ms. Zamojski that the parent company owner the building. There were other tenants in the building but they had no signage.

Mr. Madfis felt there was a way to emphasize the signage using creative graphics without making it 900 square feet. He felt the signage represented "something very commercial and not very sophisticated." Mr. Madfis thought this building was unique and already stood out from the highway.

Mr. Lochrie said the sign had been lowered on the building to make it an integral, more attractive part of the building.

Chair Centorino said this design concerned her even more than the previous design. She had viewed the building several times from I-95 and agreed with Mr. Madfis that it stood out from the highway. Mr. Lochrie argued it was not a matter of whether the building was visible, it was a matter of how long the building was visible while driving by.

Mr. Lochrie confirmed for Ms. Zamojski that this was the Zimmerman logo and branding.

Chair Centorino opened the public hearing. There being no members of the public

wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Mr. Stresau stated he was not prepared to "grant anything in excess of what the code is because I don't want to see Marriott come in and anybody else come in and say, 'Well, you guys gave the applicant more than what the code requires so we want to make our sign bigger.'" Mr. Lochrie asked if Board members might approve a different sized sign.

Motion made by Mr. Stresau, seconded by Mr. Madfis, to approve the request.

Chair Centorino pointed out that the application was for 1,088 square feet; staff's recommendation was to limit the sign to 900 square feet. Mr. Lochrie said the applicant had agreed to reduce the size to 900 square feet, but suggested they would agree to a further reduction in size.

Mr. Shallenberger felt the change in the signage was attractive and he thought the Board should approve it, rather than requiring a smaller sign that could not be seen and/or was unattractive.

Mr. Madfis felt there was a way to design an effective sign that would meet the code.

In a roll call vote, motion **failed** 3 - 4 with Mr. Bond, Mr. Stresau, Mr. Madfis and Chair Centorino opposed.

3. APPEAL NO. 13-23

Index

APPLICANT: 6600 North Andrews Avenue LLC, c/o Cardinia Real Estate LLC
AGENT: Michael E. Wood Consulting, Inc., Michael E. Wood
LEGAL: PARK LAKE 106-1 B PARCEL A LESS PARCELS DESC IN OR
11921/815
ZONING: B-3 ((Heavy Commercial/Light Industrial Business))
STREET: 6600 N ANDREWS AVE
ADDRESS: Fort Lauderdale, FL
DISTRICT: 1

APPEALING: Section 47-22.11 (Outdoor advertising display signs; landscaping and non-point of purchase signs)

Requesting a variance to allow an off-premises detached freestanding sign to be located on an adjacent lot where the subject site does not have direct access to the right-of-way of Andrews Avenue and where the code defines an off-premise sign as outdoor advertising and where the code states that outdoor advertising shall be prohibited within the City limits.

STAFF RECOMMENDATION:

Staff recommends denial of the request.

Withdrawn by the applicant.

4. APPEAL NO. 13-24

Index

APPLICANT: Stewart G. Gorenberg
AGENT: James Prentice, Key West Seafood & Spice, LLC.
LEGAL: CROISSANT PARK RESUB BLK 38 52-8 B LOT 17 LESS W 51
ZONING: SRAC-SAe (South Regional Activity Center-South Andrews
east)
STREET: 1627 S. Andrews Avenue
ADDRESS: Fort Lauderdale, FL
DISTRICT: 4

Temporary Nonconforming Use Permit: Section 47-24.12.A.6

Requesting a temporary use permit subject to the criteria of Section 47-24.12.A.6, which states, granting of the temporary nonconforming use permit shall not be incompatible with adjoining properties or the surrounding neighborhood or otherwise contrary to the public interest.

STAFF RECOMMENDATION:

Staff recommends approval of the request subject to conditions of approval

Conditions of Approval:

1. The temporary use permit shall only be valid for a period of 8 months or when interior alterations are completed on the building, whichever comes first;
2. Bathroom facilities will be provided at all times during hours of operation; and,
3. Subject to engineering approval of safe pedestrian pathways, parking and service areas

Mr. Fajardo reminded Board members that in 2011 the Andrews Avenue corridor had been rezoned to a Regional Activity Center [RAC] to encourage active uses on the street. This use would temporarily activate the corner while the owner was renovating the property to a restaurant. Mr. Fajardo stated the use was a temporary food sales trailer.

James Prentice, agent, showed aerial photos of the area and explained he was a seafood purveyor who sold to restaurants and he wanted to have his own restaurant. He was leasing the current building with the intention of opening a restaurant there, and in the meantime he had opened as a retail/wholesale operation. He was about to remodel the building, and once remodeling began he would need a trailer from which to sell the seafood. Mr. Prentice displayed a photo of the trailer and a rendering of the

property showing where the trailer would be sited. He said he would also install a walkway for pedestrians to access the trailer.

Mr. Dunckel confirmed for Chair Centorino that a tenant may apply for a variance with the permission of the property owner.

Mr. Madfis was concerned about what would happen if the renovation was not completed on time and asked if Mr. Prentice would abandon the trailer. Mr. Prentice stated he would remove it from the site, as he had other uses for it. Mr. Prentice explained that his hardship was the loss of income he would suffer when he was unable to conduct business due to the renovation.

Mr. Fajardo reminded the Board that a temporary use permit did not require a hardship; the applicant only needed to demonstrate that the use was compatible with the surroundings. He added that he had informed Mr. Prentice that the trailer and service area must be completely within the property lines.

Mr. Stresau asked about parking requirements in the area. Mr. Fajardo explained that the first 2,500 square feet was exempt from the parking requirement and the building was less than 2,500 square feet. Mr. Stresau was concerned about the lack of parking in the area. Mr. Fajardo stated there was on-street parking on Andrews Avenue and also in the right-of-way behind the building.

Ms. Zamojski asked about the start date for the 8-month temporary use permit and Mr. Fajardo stated this would begin on the date the Board's Final Order was signed.

Mr. Scott asked about the mobile vending ordinance and Mr. Fajardo explained that west of this property, mobile vending was allowed. The ordinance provided for temporary vending but the vendor must leave at the end of the day. Mr. Fajardo said, "The odd thing is...it's not on the corridor; it's against the railroad track." He stated the City would be looking at this in the future.

Mr. Stresau questioned the prospective location of the trailer and Mr. Fajardo said he had advised Mr. Prentice to locate it here based on circulation.

Mr. Stresau pointed out that a construction trailer would be allowed in this location on the site. Mr. Fajardo agreed, and said the request was not about the trailer but the food vending use. Mr. Prentice informed the Board that there was access to power in this area of the site. He anticipated opening at approximately 6:30 a.m. for breakfast.

Chair Centorino opened the public hearing. There being no members of the public wishing to address the Board on this item, Chair Centorino closed the public hearing and brought the discussion back to the Board.

Motion made by Mr. Madfis, seconded by Ms. Zamojski, to approve the request, subject to staff's recommendations. In a roll call vote, motion passed 7-0.

Communication to the City Commission

Index

None.

Report and for the Good of the City

Index

Mr. Stresau felt if the Board voted against an appeal for which staff had made recommendations for approval this would present "a tougher row to hoe if it's appealed to circuit court." Mr. Madfis felt the information from staff was important but did not think it should be "couched in the concept of approval; I think it should be information." Mr. Stresau agreed the Board should receive information from staff but did not agree it should be in the form of a recommendation.

Mr. Shallenberger said in the past, he felt there had been "a lot of weaseling by staff" and the Board had not received information they requested, and he wanted staff to be on the record. He acknowledged that this was a different staff now, so he may need to rethink this. Mr. Shallenberger agreed that the Board should know staff's opinion.

Ms. Zamojski was concerned about staff's using the word "recommendation" and thought staff could present the information verbally in the future.

Mr. Bond agreed with Mr. Stresau that this could send mixed signals but also wanted staff's input.

Ms. Rodstrom pointed out that as a quasi-judicial board, the word "recommendation" was a heavy word, coming from staff, so perhaps the information could be called input or comments.

Ms. Zamojski asked if the City Attorney's office had approved the staff recommendations section and Mr. Fajardo stated they had spoken to Mr. Dunckel. Mr. Fajardo explained that the intent had been to provide the Board with staff's perspective from a planning point of view, not from a zoning point of view. Staff did not wish to circumvent the Board's determination about the variance criteria.

Chair Centorino agreed the Board welcomed staff's input but thought it should be called information, not a recommendation.

Mr. Fajardo agreed to take the Board's input back to his managers to develop an alternative to present to the Board. Mr. Dunckel recommended staff discuss this based on the Board's input. He stated there was existing case law regarding a board's denial of a variance that staff had recommended approving but noted that staff's recommendations were just recommendations. In court, they would test the record

against the criteria and "staff's recommendations really don't weigh into that one way or the other; they may be factors that one would consider for conditions that might surround a variance." He confirmed for Ms. Zamojski that if a case was appealed to the circuit court, no Board member or staff would be involved.

Mr. Shallenberger stated he had been concerned about Mr. Stacker's argument that three Board members had erred in making a decision that was not in favor of the applicant. Chair Centorino remarked that the applicant had no new material and he wanted a new hearing, so he was left with one argument [that the Board had made an error.]

There being no further business to come before the Board, the meeting was adjourned at 8:23 pm.

Vice Chair:



Michael Madfis

Attest:



ProtoType Inc.

Minutes prepared by: J. Opperlee, Prototype Inc.